



C.M.A(MD)No.22 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 23.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.22 of 2012

and

M.P(MD)No.1 of 2012

and

Cros.Objection(MD)No.28 of 2012

C.M.A(MD)No.22 of 2012:

The New India Assurance Company Limited,
Pillars Gate,
Opposite to Stadium,
Nagercoil,
Kanyakumari District,
Represented by its Branch Manager.

... Appellant/3rd Respondent

Vs.

1.Abdul Azeez

2.Nabizad Beevi

3.S.Mohamed Ashik

4.A.Aseema

5.A.Meeran Mydeen

... Respondents 1 to 5/Petitioners

6.R.Rajendran

... 6th Respondent/1st Respondent

7.V.Venkatachalam

... 7th Respondent/2nd Respondent



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree, dated 29.07.2011 made in M.C.O.P.No.107 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Court, Nagercoil.

For Appellant : Mr.K.Murugesan

For R-1 to R-5 : Mr.C.Sankar Prakash

For R-6 & R-7 : No appearance

Cros.Objection(MD)No.28 of 2012:

1.Abdul Azeez

2.Nabizad Beevi

3.S.Mohamed Ashik

4.A.Aseema

5.A.Meeran Mydeen

... Cross Objectors

Vs.

1.R.Rajendran

2.V.Venkatachalam

3.The New India Assurance Company Limited,
Pillars Gate,
Opposite to Stadium,
Nagercoil,
Kanyakumari District,



C.M.A(MD)No.22 of 2012

Represented by its Branch Manager.

... Respondents

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Prayer : This Cross Objection filed under Order 41, Rule 22 of the Civil Procedure Code, 1988, against the order and decree, dated 29.07.2011 of the learned Motor Accident Claims Tribunal (Special Court) Nagercoil in M.C.O.P.No.107 of 2009 in so far as it is against the cross objector.

For Cross Objectors : Mr.C.Sankar Prakash

R-1 : Dismissed

For R-2 : No appearance

For R-3 : Mr.K.Murugesan

COMMON JUDGMENT

Cros.Objection(MD)No.28 of 2012:

When the matter is taken up for hearing today, the learned Counsel appearing for the Cross Objector seeks permission of this Court to withdraw the Cross Objection and he has also made an endorsement to that effect.

2. In view of the submissions made by the learned Counsel appearing for the Cross Objector, this Cross Objection stands dismissed as withdrawn.



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3. The present Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.107 of 2009, dated 29.07.2011 on the file of the Motor Accident Claims Tribunal, Special Court, Nagercoil, wherein, the petitioners 1 to 5 herein have filed a claim petition as against the respondents 6 and 7 herein and the appellant herein.

4. The Tribunal has awarded a sum of Rs.7,65,000/- towards compensation. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeal has been preferred by the Insurance Company (i.e.,) appellant / third respondent.

5. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

6. The brief facts of the petition averments are as follows:

These petitioners are legal heirs of the deceased Mujeeb Rahman.



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On 30.04.2006, when the deceased Mujeeb Rahman was travelling in the bus bearing Registration No.TN 23 N 102 belonging to the State Express Transport Corporation (Thiruvalluvar) from Chennai to Tirunelveli, at the time, the bus was stationed due to got punctured. At the time, the driver of the first respondent lorry bearing Registration No.TN 31 D 2251 came in a rash and negligent manner and dashed against the right side of the bus. As a result of which, the deceased died in the accident. The deceased was the only breadwinner of the family and he was aged only about 27 years at the time of accident and he was earning a sum of Rs.10,000/- per mensem and perks. Hence, the petitioners claimed compensation of Rs.17,22,500/-.

7. Brief averments of the counter affidavit filed by the third respondent are as follows:

The petitioners are to prove the age, employment, income of the deceased Mujeeb Rahman and the respondent denies the manner of accident. The accident was took place due to the negligence on the part of the bus driver. The deceased was a bachelor and he has no permanent income. The accident took place due to the negligence on the part of the bus driver. Hence, the third respondent is not liable to pay any



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compensation to the petitioners.

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8. In order to prove the case of the petitioners, the petitioner had examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.13 and on the side of the respondents, no witnesses were examined and no documents were marked.

9. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.7,65,000/- towards compensation by directing the third respondent to pay the above said amount.

10. Aggrieved by the above said order, the Insurance Company (i.e.,) third respondent preferred the present Civil Miscellaneous Appeal on the ground of excess compensation by challenging the quantum of compensation.

11. The learned Counsel appearing for the appellant would contend that the accident was occurred due to the negligence on the part of the



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driver of the bus and not by the driver of the first and second respondents.

The deceased was a bachelor and he had no permanent income and the Tribunal has taken the deceased salary as Rs.1,00,000/- per year without any basis and the petitioners have failed to examine the employer of the certificate given by the employer in respect of the salary. Therefore, the petitioner failed to prove the monthly income of deceased and the Tribunal has awarded excess compensation and thereby, the order passed by the Tribunal is liable to be set aside.

12. The learned Counsel appearing for the respondents 1 to 5 would contend that the respondents are the dependents of the deceased Mujeeb Rahman. He was aged about only 27 years at the time of accident and he was earning a sum of Rs.1,00,000/- per year and the Tribunal has failed to award future prospects for the salary of the deceased and all the respondents 1 to 5 / petitioners are dependents of the deceased. Thereby, the separate cross objection was also filed by the petitioners. The Tribunal ought to have awarded a sum of Rs.17,00,000/- for compensation by taking a salary of deceased as Rs.10,000/- and by future prospects. But only awarded a sum of Rs.7,65,000/- without adding the future prospects.



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Therefore, the award amount has to be enhanced.

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13. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

14. According to the appellant, the accident took place only due to the negligence on the part of the driver of the bus and not by the negligence on the part of the driver of the lorry. In order to prove the rash and negligence on the part of the lorry driver, the petitioners had examined P.W.1 and P.W.2 and FIR also registered as against the lorry driver. As per the petitioners' evidence, the accident took place due to the rash and negligence on the part of the driver of the lorry. There is no contravention that the sixth and fourth respondents / first and second respondents lorry was Insured with the appellant / third respondent.

15. In order to rebut the evidence of the petitioners, no contra evidence was adduced by the appellant / third respondent. Therefore, the



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petitioners proved the rash and negligence driving of the driver. Since the lorry was insured with the appellant / third respondent / Insurance Company, the Insurance Company is liable to pay compensation. The main contention of the appellant / third respondent is that the award amount passed by the Tribunal is too high. Without any basis, the Tribunal has taken a sum of Rs.1,00,000/- as yearly income of the deceased.

16. In this context, the learned Counsel appearing for the respondents 1 to 5 brought to the knowledge of this Court that the petitioners have examined P.W.1 and also marked as Exhibits P.7 salary certificate of the deceased. As per Exhibit P.7, the deceased earned a sum of Rs.1,00,000/- per year and no contra evidence adduced by the respondents to rebut the evidence of P.W.1 and Exhibit P.7. Therefore, this Court also taken the salary of the deceased as Rs.1,00,000/- per year. The Tribunal also taken the income of the deceased as Rs.1,00,000/- per year. However, the Tribunal has failed to consider the future prospects of the deceased. As per ***Pranay Sethi's case***, since the deceased was aged about 27 years, at the time of accident, 40% of the income has been taken into account for future prospects, thereby the annual income is increased as



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Rs.1,40,000/-, since the deceased was a bachelor 50% of income has to be deducted for personal expenses. Thereby the annual income of the deceased would come to a sum of Rs.70,000/-. The Tribunal has adopted the multiplier based on the age of the mother of the deceased.

17. It is well settled that as far as the multiplier is concerned, the age of deceased has to be taken into account and thereby, the age of the deceased has to be taken into account for adopting multiplier. As per the educational certificate of the deceased, he was aged about 27 years on the date of accident and thereby, appropriate multiplier is 17. Considering the income of the deceased and adopting the multiplier of 17, the award amount would come to a sum of Rs.11,90,000/- ($\text{Rs.70,000/-} \times 17$) = Rs.11,90,000/-. The petitioners are entitled to a sum of Rs.48,000/- towards consortium and the petitioners are entitled to a sum of Rs.18,000/- towards loss of estate and also entitled to a sum of Rs.18,000/- towards funeral expenses. In total, the petitioners are entitled to a sum of Rs. 12,74,000/- rounded off to Rs.12,70,000/-. The Tribunal has failed to take into consideration of the age of the deceased for adopting multiplier and also failed to take the future prospects. Thereby the award passed by the



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Tribunal is liable to be modified as stated above. Therefore, the respondents 1 to 5 / petitioners are entitled to a sum of Rs.12,70,000/- towards compensation for the death of the deceased Mujeeb Rahman. Since the vehicle was insured with the appellant / third respondent, he is liable to pay the above said compensation. Though the appeal is filed by the Appellant by challenging the quantum of amount to reduce the quantum of award in view of the above said discussion, this Court is inclined to increase the compensation as above.

18. In the result, this Civil Miscellaneous Appeal stands partly allowed and the order passed by the Tribunal in M.C.O.P.No.107 of 2009 on the file of the Motor Accident Claims Tribunal, Special Court, Nagercoil is modified to the effect that the petitioners are entitled to a sum of Rs.12,70,000/- towards compensation and the third respondent is directed to deposit the above said amount along with interest at the rate of 7.5% from the date of petition till the date of realization. Since Mujeeb Rahman is died during the pendency of the appeal, the first petitioner is entitled to a sum of Rs.5,00,000/- with the proportionate interest and cost. The second petitioner is entitled to a sum of Rs.2,00,000/- with the



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proportionate interest and cost. The third and fourth petitioners each are entitled to a sum of Rs.2,85,000/- with proportionate cost and interest. The appellant / third respondent is directed to pay the above said amount by deducting the deposit already made by them. The respondents are directed to pay the balance Court fee within 10 days from today. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

23.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Motor Accidents Claims Tribunal,
Special Court, Nagercoil.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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